

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-334

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JAN 08 2009  
JOEL SCHNEIDER  
U.S. Magistrate Judge

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

ROBERT GREENHALGH

-vs-

WILLIAM H. FAUVER, et al,

Defendants.  
-----

\* \* \* \*

FRIDAY, DECEMBER 12, 2008

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above  
5 matter taken by Theresa O. Mastroianni, Certified  
6 Court Reporter, license number 30X100085700, and  
7 Notary Public of the State of New Jersey at the  
8 United States District Court House, One Gerry Plaza,  
9 Camden, New Jersey, 08102, commencing at 1:15 PM.

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1 JUDGE BISSELL: I'm reopening  
2 proceedings in the case of Robert Greenhalgh docket  
3 number 08-334.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of Mr.  
12 Greenhalgh.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Mr. Greenhalgh talks essentially about  
18 two incidents, one of them involving his cell  
19 extraction from A Unit which occurred on or about the  
20 second of August and another involving an incident in  
21 the shower at a later time. As far as the events of  
22 August 2nd with the extraction of the inmates from A  
23 Unit, Mr. Greenhalgh has given so many versions of  
24 the events of that day, some of them under oath which  
25 he later acknowledged were false, that his

1 credibility as to that is completely undermined.

2 Frankly, I have no reluctance  
3 whatsoever to apply the false in one false in all  
4 analysis there because he did, indeed, by his own  
5 admission, testify falsely as to a material matter.  
6 And I'll just take a brief moment to review these. I  
7 may expand this analysis in the final written opinion  
8 under local Rule 52.1.

9 At trial on the 22nd of April of '08 he  
10 testified that he had been knocked down in his cell.  
11 He made no references to any events occurring on his  
12 walk to the gymnasium. He said that upon arrival in  
13 the gym he was punched in the stomach, thrown into a  
14 head lock and twisted and at that point struck in the  
15 side in the vicinity of his left knee causing an  
16 injury to that knee.

17 Indeed, there is a contemporaneous  
18 medical record, D-237, which shows he did have a  
19 complaint about his knee on the fourth of September  
20 of '97 and with knee strain for which he was provided  
21 Motrin.

22 At his deposition, however, on the 19th  
23 of June, 2002 he testified, and of course I'm  
24 summarizing, that approximately ten officers came  
25 into his cell on the date of extraction, forced him

1 to the floor, kicked him, punched him, slapped him,  
2 grabbed his arms and legs, squeezed his arms behind  
3 his back and pushed his head into the ground. At his  
4 trial testimony at page 173, he said that didn't  
5 happen.

6 In his deposition under oath, he said  
7 that a hundred cops were lined up on the way to the  
8 gym, they cursed and hit him on his way to the gym  
9 all along the line.

10 Page 180 of his transcript before the  
11 court he said it didn't happen and that he was not  
12 telling the truth then. Once again, of course, he  
13 had been under oath at the time.

14 His deposition testimony, of course,  
15 had also mentioned the head lock at the gym and the  
16 banging into his knees in the plural while his  
17 handcuffs were taken off.

18 In his sworn answers to  
19 interrogatories, Exhibit D-239, he stated that he had  
20 been beaten by the guards on the gauntlets, again,  
21 acknowledging at the trial that that wasn't true.

22 He had stated that he had had injuries  
23 to both knees from being struck. Acknowledged, no,  
24 it was only his left knee. And his allegations in  
25 the sixth amended complaint mirrored the

1 interrogatories.

2           Looking through all of this and piecing  
3 together what might or might not have happened, there  
4 is considerable inconsistency, admitted false  
5 testimony under oath, and some level of consistency  
6 with regard to a head lock and a knee injury at the  
7 door of the gym. Nevertheless, the admitted falsity  
8 under oath of his other testimony here, as I said,  
9 completely neutralizes any credibility that he might  
10 have with regard to the other events supposedly  
11 occurring at the gym. One suspects, frankly, that  
12 the next time around we'll get yet another version of  
13 these events.

14           Accordingly, I find that as to the  
15 incidents regarding his extraction on or about the  
16 second of August, 1997, that he's failed to establish  
17 his burden of proof by a preponderance of the  
18 credible evidence. In fact, his admitted false  
19 statements under oath completely scuttle his  
20 credibility in that regard.

21           I now turn to the alleged incident in  
22 the shower in which he states, in summary, that upon  
23 being backed out of the shower he was touched in the  
24 area between each of his buttocks by a baton for  
25 approximately a second by one of the SOG officers.

1                   While I find that that is, indeed,  
2 embarrassing, that it could well generate emotional  
3 shock, so to speak, it is at the very most a minimal  
4 assault. It inflicted absolutely no physical injury  
5 whatsoever, not even deminimis physical injury and,  
6 therefore, under the law in Section 1983 actions and  
7 particularly those involving alleged excessive use of  
8 force in violation of the Eighth Amendment, he has no  
9 basis for the recovery of what are essentially  
10 emotional damages here. There was not sufficient  
11 physical touching or physical injury to support such  
12 a recovery. Under all the circumstances, therefore,  
13 assuming for the purpose of the record that he has  
14 accurately and consistently described the events  
15 occurred upon his extrication from the shower, Mr.  
16 Greenhalgh has failed to establish a cause of action  
17 based on that event.

18                   Finally, although not every item of  
19 evidence has been discussed in this opinion/report,  
20 all evidence presented to the Special Master was  
21 reviewed and considered. For the reasons set forth  
22 above, I recommend in this report that the district  
23 court enter an order and judgment of no cause for  
24 action with regard to Robert Greenhalgh.  
25



## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

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Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XIO857  
Date: January 2, 2009